Filed 1/8/02

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. PIERRE ZAMORA, Defendant and Appellant.	B147877 (Super. Ct. No. NA046874)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bradford L. Andrews, Judge. Affirmed.

John Doyle, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc E. Turchin, Supervising Deputy Attorney General, and Jennifer A. Jadovitz, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant, Pierre Zamora, appeals from the judgment entered following his conviction, by jury trial, for manufacturing methamphetamine, with a prior serious felony conviction (Health & Saf. Code, § 11379.6, subd. (a); Pen. Code, § 667, subd. (b) - (i)).[1] Sentenced to a state prison term of six years, he claims there was trial error.

The judgment is affirmed.

BACKGROUND

Viewed in accordance with the usual rule of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established the following.

1. *Prosecution evidence.*

Danielle Loftis and Dana Dantzler, who were boyfriend and girlfriend, lived at 851 North Pacific, San Pedro, in an automotive shop that had been converted into a residence. Loftis testified there was a "living room area, a bathroom, and a bedroom, but it was . . . full of automotive stuff." Loftis and Dantzler both used methamphetamine. Dantzler manufactured the drug, while Loftis helped by going to various stores to obtain the ingredients and by cleaning up after a "cook." Sometime after June 2000, Zamora moved in with them. He usually slept in the living room, although when Loftis and Dantzler were arguing or otherwise wanted privacy Zamora would be asked to sleep in a van outside.

---

[1] All further statutory references are to the Penal Code unless otherwise specified.

Loftis testified that Zamora, too, used methamphetamine and, after saying he wanted to get involved in producing it, he began helping out. He assisted Dantzler in the manufacturing process by doing such things as grinding up pills and monitoring the laboratory apparatus to prevent fires. (The makeshift lab was set up in the living room.) Zamora also accompanied Loftis on shopping trips to purchase ingredients like pseudoephedrine tablets and iodine – items on which stores imposed per-customer quantity limits. Loftis testified that at one point, when they ran out of red phosphorus and all three of them had reached their monthly limit, Zamora said he knew where they could get it in Mexico. He and Dantzler made the trip to Mexico to obtain red phosphorus.

On October 11, 2000, Zamora and Dantzler had a fight and asked Zamora to sleep outside in the van. The next morning, Redondo Beach Police Officer David Taneman executed a search warrant at 851 North Pacific. He described the house as "[e]xtremely cluttered. It probably was a business at one time, maybe automotive repair, something like that. There was junk all over the place, automotive junk inside and out." Taneman spoke to Zamora, who was in a van parked outside the house. Zamora said he had been living at the house for about a month, although he slept outside in the van. He said he didn't know what was going on inside the house because he just helped Dantzler work on cars and clean up. Zamora was released.

Meanwhile, the methamphetamine lab was discovered, and Dantlzer and Loftis were arrested. Police discovered various items routinely used in the manufacture of methamphetamine, including: hot plates, glassware, different acetones, a gallon of

muriatic acid, tubing used to vent fumes, a propane bottle with a torch head, a camp stove, lighter fluid, an electric burner and a purifying mask. Loftis told officers that Zamora was also involved in the manufacturing operation. A few hours later, Zamora came back to the house. He told Taneman he knew Loftis and Dantzler smoked methamphetamine, but he denied knowing they were making it. He acknowledged he kept some of his things at the house, including a briefcase and a tool box. Asked where Loftis and Dantzler would hide red phosphorous, Zamora replied: "Well, I don't know, but there is a motorcycle tire in the living room that looks out of place. If I were to hide it, it would be in there."[2] This comment struck Taneman as odd "[b]ecause the location was so cluttered and so full of junk, inside and out, that a motorcycle tire in the middle of this living room, which had junk strewn throughout . . . just didn't strike me as being out of place. Everything in that place was out of place." The motorcycle tire was taken off the rim; inside was a bag containing about 100 grams of red phosphorus. Taneman noticed that Zamora's hands were burned and scorched. Taneman testified he frequently sees people involved in methamphetamine manufacturing with burned hands because the chemical ingredients are volatile and caustic.

---

[2] Taneman testified he was present when Detective Scott McCamy asked Zamora "if there was a hiding place for the red phosphorus and where would it be." Taneman later testified he did not remember McCamy's exact words. McCamy testified: "I asked him if he knew of any locations where persons might hide drugs or chemicals." McCamy testified Zamora's "response was that there's a motorcycle wheel on the floor in the living room that looked out of place to him."

2. *Defense evidence.*

The only defense evidence was a stipulation that when Loftis appeared for arraignment in this case, bail was set at $500,000 and she was released on her own recognizance. Thereafter, she failed to make a court appearance, a warrant was issued for her arrest, and she was remanded into custody in lieu of bail on January 3, 2001. On January 23, 2001, she was released on her own recognizance after pleading guilty.

CONTENTIONS

1. There was insufficient evidence corroborating Loftis's accomplice testimony.

2. The trial court erred by failing to fully instruct the jury on accomplice testimony.

3. The trial court erred by failing to instruct the jury on aiding and abetting principles.

4. The trial court erred by refusing to take judicial notice that the prison sentence for methamphetamine manufacturing is presumptive rather than mandatory.

5. The cumulative effect of the errors requires reversal.

DISCUSSION

1. *Corroboration of accomplice testimony.*

Zamora contends his conviction must be reversed because there was insufficient evidence corroborating Loftis's accomplice testimony accusing him of being one of the people involved in the methamphetamine operation. This claim is meritless.

Section 1111 provides: "A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense . . . ." The corroborating evidence must tend to connect the defendant to the crime, but it has to neither establish every element of the offense nor corroborate all of the accomplice's testimony. (*People v. Heishman* (1988) 45 Cal.3d 147, 164-165.) Corroborating evidence "is sufficient if it tends to connect the defendant with the crime in such a way as to satisfy the jury that the accomplice is telling the truth." (*People v. Fauber* (1992) 2 Cal.4th 792, 834.) Although the corroborating evidence need only *tend to connect* the defendant to the crime, it must do more than raise a mere conjecture or suspicion of guilt. (*People v. Szeto* (1981) 29 Cal.3d 20, 27.)

There was ample evidence connecting Zamora to the methamphetamine operation. He admitted he had been living with Loftis and Dantzler, and that he kept some personal possessions around the house, although he lied about sleeping in the van. Given the apparently small size of the living quarters, it was reasonable to infer Zamora could not have been unaware of an operating methamphetamine lab that routinely utilized chemicals producing noxious and toxic fumes. Zamora's burned hands were typical of people involved in the manufacture of methamphetamine. His knowledge of exactly where the red phosphorus was hidden, given the apparent chaos of the house, raised a strong inference Zamora was feigning innocence in an attempt to disguise his guilt.

2. *Accomplice instructions.*

Zamora contends his conviction must be reversed because Loftis was an accomplice as a matter of law but the trial court failed to instruct the jury on evaluating accomplice testimony; in particular, that accomplice testimony must be corroborated and should be distrusted. Any error was harmless.

It is well-established that a failure to give required accomplice instructions is harmless if there is sufficient corroborating evidence in the record. (*People v. Arias* (1996) 13 Cal.4th 92, 142-143; *People v. Sanders* (1995) 11 Cal.4th 475, 534-535.) As discussed above, there was sufficient corroborating evidence here. The trial court's failure to give CALJIC No. 3.18 (accomplice testimony to be viewed with distrust) was harmless because general instructions on evaluating witness credibility "were sufficient to inform the jury to view [Loftis's] testimony with care and caution, in line with CALJIC No. 3.18." (*People v. Lewis* (2001) 26 Cal.4th 334, 371.) Zamora acknowledges these rules, but argues they are unfair to defendants and should not be followed. Of course, we are constrained to follow them. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 454-457.)

3. *Aiding and abetting instructions.*

Zamora contends the trial court erred by failing to instruct the jury on aiding and abetting principles. This claim is meritless.

"Despite their equal status as principals in the crime, in other instances the law does distinguish between direct perpetrators and aiders and abettors. In part, this is

because the actions of a purported aider and abettor are often more peripheral and ambiguous than those of the direct perpetrator. [Citation.] Indeed, actions causally facilitating the crime may be entirely innocent. [Citation.] Therefore, in order to ensure that the purported aider and abettor has the mens rea consistent with criminal liability, case law has established that such a person must 'act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.' [Citation.] Thus, while the criminal liability of an aider and abettor is the same as that of a direct perpetrator, the required mental states differ between the two classes of principals." (*People v. Cook* (1998) 61 Cal.App.4th 1364, 1368-1369.) However, "one who engages in conduct that is an element of the charged crime is a perpetrator, not an aider and abettor, of the completed crime. . . . If the defendant performed an element of the offense, the jury need not be instructed on aiding and abetting, even if an accomplice performed other acts that completed the crime." (*Id.* at p. 1371.)

The People point out Zamora was tried as a direct perpetrator, not as an aider and abettor. Zamora does not challenge this assertion, but argues aiding and abetting instructions (particularly those directing that mere presence and knowledge of a crime do not make one an accomplice) were required because the jury might have completely disbelieved Loftis's testimony and convicted Zamora just because he lived at the house. This is nothing more than rank speculation, and in light of the evidence and the People's closing argument, there is no reasonable possibility it could have happened.

4. *Judicial notice of sentencing provision.*

Zamora contends that, by refusing to take judicial notice of the fact that a state prison sentence following a conviction for manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)) is presumptive rather than mandatory under Penal Code section 1203.073, the trial court excluded relevant evidence tending to show bias on the part of Loftis. This claim is meritless.

During Loftis's cross-examination, defense counsel asked, "When you . . . got arrested on the warrant and you were in jail . . . and the detectives came and talked to you, did any of you discuss what was going to happen to you on this case, what you were going to face?" Loftis replied: "I believe – I know there is a mandatory sentence and a minimum number. They didn't promise that [*sic*]. I wouldn't get the maximum three years, but I would get the mandatory two years in state prison. They didn't say that, but that's what I'm assuming." Much later in the trial, defense counsel asked the trial court to take judicial notice that under section 1203.073 the prison term for manufacturing methamphetamine is really presumptive, not mandatory, because under certain conditions a defendant could get probation.[3] Counsel argued the jury might erroneously believe Loftis was definitely facing a mandatory term. The trial court responded, "Well, it went to her cooperation and inducement to testify. As to her state of mind, she's going to be sentenced to state prison. Whether it is accurate or not, that's her state of mind."

---

[3] Section 1203.073 provides that probation shall not be granted to anyone convicted of violating Health and Safety Code section 11379.6, except "in an unusual case where the interests of justice would best be served" and the trial court so specifies on the record.

Defense counsel then argued it was possible "that nobody told her that, but she is lying to make herself look good in front of the jury."

The prosecutor argued Loftis "was testifying from her belief as to what possibly may happen to her and not from a legal background in which she knows what mandatory minimums are and so forth." The trial court ruled: "I won't take judicial notice of that. I don't know what the sentencing options are in this instance that may have been made to Miss Loftis or by the court or to Miss Loftis' counsel. Her testimony is that she believes there is a mandatory state prison commitment, I believe she indicated two years. That may be inaccurate, but it was simply for the purposes of determining her state of mind regarding any offer of leniency that may have been given to her for her testimony. She indicated none was given. If her belief is that she is going to be committed to state prison as a result of her plea of guilty, so be it, even if it's erroneous ultimately."

Zamora argues the trial court's refusal to take judicial notice of the sentencing provisions in section 1203.073 prevented him from impeaching Loftis because the existence of "section 1203.073 belies Loftis' assertion that the prison term is mandatory. Rather, it establishes that Loftis, contrary to her characterization of a state prison term as 'mandatory,' could very well harbor the hope that she would receive probation by engaging in the 'unusual' activity of serving 'the interests of justice' – inter alia, testifying against her codefendant."

But there is no evidence Loftis knew probation was a possibility. As the trial court noted, Loftis testified it was her own belief that she faced a certain prison sentence; she

never said the police or the prosecutor told her this. The existence of a Penal Code provision showing that belief to be erroneous was irrelevant if Loftis was unaware of its existence. Defense counsel made no attempt during cross-examination to clarify or explore Loftis's assumptions concerning her state prison sentence. It was this that prevented an attack on her credibility, not the trial court's refusal to take judicial notice of section 1203.073.

5. *Cumulative error.*

Zamora contends the accumulated harm caused by the trial court's errors requires reversal. (See *People v. Buffum* (1953) 40 Cal.2d 709, 726 ["cumulative effect of the errors requires reversal"]; *People v. Cruz* (1978) 83 Cal.App.3d 308, 334 ["combination of errors . . . requires reversal"].) When a case is close, a small degree of error in the trial court could, on appeal, be considered enough to have influenced the jury to wrongfully convict. (See *People v. Wagner* (1975) 13 Cal.3d 612, 621 [judgment reversed because "case comes within the rule that a miscarriage of justice has occurred when the case is closely balanced and the acts of misconduct are such as to have contributed materially to the verdict"].) In light of the foregoing, it is apparent the errors here were few and "did not, either singly or together, result in any substantial detriment to the fairness or reliability" of the trial. (*People v. Sanders, supra*, 11 Cal.4th at p. 537.) Reversal is not required.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P.J.

We concur:

CROSKEY, J.

KITCHING, J.